



SN 10/005,467

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Keith D. Allen	Examiner:	Qian, Celine X
Serial No.:	10/005,467	Group Art Unit:	1632
Filed:	December 4, 2001	Docket No.:	R758/75658.029500
Title:	Transgenic Mice Containing PTP36 Tyrosine Phosphatase Gene Disruptions		

DECLARATION OF ROBERT DRISCOLL PURSUANT TO 37 C.F.R. § 1.132

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

I, Robert Driscoll, residing at 23 Chicory Lane, San Carlos, CA 94070, hereby declare:

1. I am presently employed as Vice President of Intellectual Property & Legal Affairs at Assignee, Deltagen, Inc., in San Carlos, CA. I have also previously served as the Company's Senior Director of Intellectual Property, in which position I managed and oversaw the Company's intellectual property portfolio, including the Company's patent filings. I possess a Ph.D in Chemistry, received from the California Institute of Technology. I also possess a J.D., received from Loyola Law School, Los Angeles. I am a registered patent attorney (Reg. No. 47,536).


2. I am familiar with the above-cited application. I am familiar with the Office Action mailed March 22, 2005. I am aware that the Examiner has rejected the claims, in part, for allegedly failing to meet the utility requirement. I am also aware that the Applicant has argued that a commercial sale of a mouse with a disrupted PTP36 tyrosine phosphatase allele within the scope of the claimed subject matter ("PTP36 tyrosine phosphatase gene knockout mouse") should satisfy the utility requirement.

3. In support of the Applicant's aforementioned argument, I hereby state that I have reviewed Deltagen's internal sales records regarding the PTP36 tyrosine phosphatase gene

knockout mouse. According to these records, the PTP36 tyrosine phosphatase gene knockout mouse has been delivered to at least one (1) large pharmaceutical company. The contractual terms by which the mice were transferred prohibit Deltagen from identifying the name of this company. However, the company is ranked among the top 10 pharmaceutical companies worldwide (based on sales).

4. It is my understanding, based on communications with our pharmaceutical company customers, that transgenic knockout mice obtained from Deltagen are used for studying gene function and for human therapeutic drug development.

5. I further declare that all statements made herein of my own knowledge are true; and further that these statements were made with knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the above-referenced application or any patent issuing thereon.


Robert Driscoll, Ph.D, Reg. No. 47,536

14 June 2005
Date